

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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C.A. No. 11-56430

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ROTHWELL, LTD.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

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**PLAINTIFF-APPELLANT ROTHWELL, LTD.'S  
EXCERPTS OF RECORD  
VOLUME 1**

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Appeal from the Judgment of the United States District Court  
for the Central District of California  
D.C. No. 10-cv-00479-RGK-FFM  
(Honorable R. Gary Klausner)

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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 WESTERN DIVISION

12 ROTHWELL, LTD., a Cayman Islands) No. SA CV 10-479 RGK (FFMx)  
Corporation, )  
13 ) [PROPOSED] JUDGMENT IN FAVOR OF  
Plaintiff, ) UNITED STATES OF AMERICA  
14 )  
vs. )  
15 )  
16 UNITED STATES OF AMERICA, )  
Defendant. )  
17 )  
18 )

19 On April 19, 2010, plaintiff Rothwell, Ltd. filed a  
20 complaint against defendant United States of America for wrongful  
21 levy pursuant to 26 U.S.C. § 7426. A bench trial was held on  
22 June 14, 2011, concluding on June 16, 2011. On June 30, 2011,  
23 the Court issued an "Order RE: Court Trial," wherein the Court  
24 granted judgment in favor of defendant United States of America  
25 and against plaintiff Rothwell, Ltd. on plaintiff's claim for  
26 wrongful levy pursuant to 26 U.S.C. § 7426.

27 Based on all of the pleadings filed by the parties in  
28 connection with this case, the trial of this case, the Court's

1 "Order RE: Court Trial" issued on June 30, 2011, and on all  
2 matters that are properly part of the record in this proceeding,  
3 and good cause appearing therefor,

4 **IT IS ORDERED, ADJUDGED, and DECREED that**

5 1. Plaintiff Rothwell, Ltd. is the nominee of Joseph R.  
6 Francis, holding its assets as a nominee for Joseph R. Francis,  
7 including its securities account with Morgan Stanley in Irvine,  
8 California.

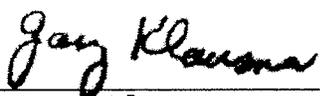
9 2. The Internal Revenue Service levy, served upon Morgan  
10 Stanley on November 6, 2009, for the funds held in Rothwell,  
11 Ltd.'s securities account, was not wrongful pursuant to  
12 26 U.S.C. § 7426.

13 3. The Court hereby grants judgment in favor of defendant  
14 United States of America and against plaintiff Rothwell, Ltd. on  
15 plaintiff's claim for wrongful levy pursuant to 26 U.S.C. § 7426.

16 4. Plaintiff Rothwell Ltd.'s complaint, filed on April 19,  
17 2010, is hereby dismissed, with prejudice.

18 **IT IS SO ORDERED.**

19  
20 DATED: July 11, 2011

  
\_\_\_\_\_  
Hon. R. Gary Klausner  
United States District Judge

21  
22 Presented by:

23 ANDRÉ BIROTTE JR.  
24 United States Attorney  
25 SANDRA R. BROWN  
26 Assistant United States Attorney  
Chief, Tax Division

27 \_\_\_\_\_  
28 VALERIE L. MAKAREWICZ  
Assistant United States Attorney  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Rothwell, Ltd.,	)	CASE No. SA CV 10-00479-RGK(FFMx)
Plaintiff(s),	)	
	)	Order RE:
v.	)	
	)	Court Trial
United States of America,	)	
Defendant(s).	)	
	)	
	)	

I. INTRODUCTION

On April 19, 2010, Plaintiff Rothwell, Ltd. ("Rothwell") filed a complaint against Defendant United States of America ("U.S.") for wrongful levy pursuant to 26 U.S.C. § 7426. The dispute concerns a levy executed by the Internal Revenue Service ("IRS") on assets held by Rothwell to satisfy tax obligations of non-party Joseph Francis ("Francis").

A bench trial was held on June 14, 2011, concluding on June 16. The Court has reviewed the record and considered all the arguments and evidence presented. Based on the credible evidence and the reasonable inferences drawn from that evidence, the Court finds that the levy of Rothwell's assets was not wrongful. Rothwell's claim therefore fails.

1 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 This opinion serves as the findings of fact and conclusions of  
3 law required by Rule 52 of the Federal Rules of Civil Procedure. Any  
4 finding of fact that actually constitutes a conclusion of law is  
5 adopted as such, and the converse is true as well.

6

7 **A. Findings of Fact**

8 1. Francis is the founder of Girls Gone Wild entertainment business  
9 and the sole owner of two U.S. corporations, Sands Media, Inc.  
10 ("Sands") and Mantra Films, Inc., ("Mantra") which are engaged in  
11 producing, promoting, marketing and distributing DVDs, infomercials,  
12 magazines, apparel and other items.

13 2. Both Mantra and Sands are "S Corporations," and as such, the  
14 profits from these companies must be reported by Francis on his  
15 individual income tax returns.

16 3. On May 24, 1999, Francis settled The Francis Trust ("Trust"),  
17 naming Hallmark Trust Ltd. ("Hallmark") as Trustee.

18 4. Hallmark was wholly owned and directed by Colin Chaffe ("Chaffe")  
19 and Nicola Jordan ("Jordan") from the time the Trust was settled until  
20 2005, when Hallmark was purchased by Brian Trowbridge ("Trowbridge").  
21 Eventually, in 2010, Hallmark resigned as Trustee, and Chaffe, in his  
22 individual capacity, took on the role.

23 5. The terms of the Trust also included an additional role of the  
24 "Protector," whose approval would be necessary to ratify certain  
25 actions of the Trustee. An entity, Pittsford, Ltd., was named as the  
26 initial Protector for the trust. In 2005, Brian Rayment ("Rayment")  
27 was named as an additional Protector.

28

1 6. Rayment has served as counsel for the Trust, Rothwell and other  
2 entities owned by the trust since at least 2002. Rayment has also  
3 served as Francis' counsel since 1992 continuing through the date the  
4 property was levied, and served as counsel for Sands and Mantra.

5 7. As Francis' counsel, Rayment owed Francis fiduciary duties and  
6 acted as his agent.

7 8. The terms of the Trust provide that all power and discretion,  
8 including decisions concerning investments and or disbursements, is  
9 determined at the sole discretion of the Trustee, with the exception  
10 of specified powers noted within the Schedules of the Trust which  
11 need the permission of the Protector.

12 9. The Francis Trust beneficiaries are Joseph Francis, his parents,  
13 his children, and Oklahoma Film Holding Corporation, an entity owned  
14 by Francis.

15 10. On June 9, 2000, Chaffe incorporated Rothwell in the Cayman  
16 Islands. Rothwell's shares are owned by The Francis Trust.

17 11. In 2001, Chaffe and Jordan opened a investment account with  
18 Morgan Stanley in Irvine, California managed by the broker John Welker  
19 ("Morgan Stanley Account"). They also opened a bank account at the  
20 Bermuda Commercial Bank in Hamilton, Bermuda for Rothwell ("Bermuda  
21 Account").

22 12. A record submitted to the Bermuda Account, signed by Chaffe and  
23 printed on Hallmark letterhead identified Francis as the sole  
24 "beneficial owner" of Rothwell.

25 13. From June 9, 2000, to November 29, 2005, Chaffe and Jordan,  
26 individually or through corporate entities they owned, controlled,  
27 directed and managed the operations, finances, assets and investment  
28 decisions of Rothwell.

1 14. Even after Trowbridge acquired Hallmark, and thus assumed duties  
2 through the entity as Trustee, Chaffe and Jordan continued to exercise  
3 control over Rothwell.

4 15. Chaffe and Jordan's continued role in managing Rothwell was  
5 provided for in an agreement appointing them "mandators" of the Trust,  
6 designed to provide them with authority to act for the Trust and  
7 continue directing Rothwell's affairs, though no longer Trustees of  
8 the Trust. This agreement included provisions indemnifying Hallmark  
9 for any actions taken by Chaffe and Jordan as mandators.

10 16. Trowbridge had reservations about the role Chaffe and Jordan  
11 played in the Trust's affairs as mandators, specifically their  
12 continued control over Rothwell, but acquiesced to the arrangement  
13 because Rayment had informed him it was what Francis desired.

14 17. Additionally, Trowbridge testified that he was not totally in  
15 control of the assets of the Trust, but rather that Rothwell, directed  
16 by Chaffe and Jordan controlled Rothwell's assets, even after he  
17 became the sole Trustee. (Ex. 157-B, 24:24-25:7)

18 18. On March 13, 2002, a \$1.03 million payment was made from  
19 Rothwell's Bermuda Commercial Bank account to fund the purchase of  
20 real property located in the "Ranchos Punta Mita development" in the  
21 Municipality of Bahia de Banderas, State of Nayarit, Mexico. This  
22 property was identified as Lot 14 (collectively with Lot 13(b),  
23 "Mexico Property").

24 19. Chaffe authorized Rothwell to make the payment at the request of  
25 Francis. Both Rayment and Francis communicated Francis' desire that  
26 Rothwell make the payment.

27 20. Rayment, at Francis' direction negotiated the terms of the Lot 14  
28 purchase with Crescent Capital, Ltd. ("Crescent Capital"), a property

1 development company and Cantiles de Mita, S.A. de C.V, the owner of  
2 the land. Mohammed Hadid ("Hadid") is the owner of Crescent Capital.

3 21. Before he or Rayment, at his direction, communicated with  
4 Rothwell concerning the property, Francis provided a \$100,000 payment  
5 by personal check to Crescent Capital as a security deposit on Lot 14.

6 22. Additionally Francis, through Mantra, paid Hadid \$495,000 toward  
7 the purchase of Lot 14. The \$1,030,000 purchase price of Lot 14  
8 represented a price available to Hadid as a developer of the Ranchos  
9 Punta Mita development. Hadid allowed Rothwell to acquire the lot for  
10 this reduced price in return for the additional payment for his  
11 interest. After this payment was made, Francis' \$100,000 security  
12 deposit was refunded to him.

13 23. Rothwell never took title to Lot 14. Instead, another corporate  
14 entity owned by the Trust, Casa Blanca de Punta Mita S.A. de C.V.  
15 ("Casa Blanca"), is the formal owner and deed holder of the lot.

16 24. Francis, through payments made by Sands and Mantra, provided the  
17 funds to develop and improve Lot 14. During 2002 and 2003, the  
18 entities paid over \$5 million to Crescent Capital for constructing a  
19 residence on the lot.

20 25. Francis directed and controlled the design and construction of  
21 the premises and improvements made on Lot 14.

22 26. In September 2005, a \$1.023 million payment was made from  
23 Rothwell's Morgan Stanley account to fund the purchase of Lot 13(b), a  
24 lot adjoining Lot 14.

25 27. At the request of Francis, Chaffe authorized Rothwell to purchase  
26 Lot 13(b) to protect the view from the residence situated on Lot 14.

27 28. Rothwell never took title to Lot 13(b). Instead, Casa Blanca is  
28 the formal owner and deed holder of the lot.

1 29. Francis has had use of the Mexico Property and its residence.  
2 Neither Rothwell, Casa Blanca, the Trust, nor its Trustee has ever  
3 controlled or denied Francis' ability to use the property.

4 30. Francis, through his corporate entities Sands and Mantra, was the  
5 ultimate source of over \$14 million in transfers to Rothwell. The  
6 majority of transfers to Rothwell were incorrectly recorded as  
7 deductible business expenses on Sands and Mantra's 2002 and 2003 tax  
8 returns, but Rothwell did not provide any goods or services to Sands  
9 or Mantra in return for the funds.

10 31. The only major disbursements made from Rothwell's Morgan Stanley  
11 Account since its creation were the payments to purchase the Mexico  
12 Property.

13 32. From its creation until the date the IRS levied its assets,  
14 Rothwell or its directors acted according to Francis' direction as  
15 expressed by Francis and Rayment as his agent.

16 33. On April 11, 2007, Francis was indicted on two counts of tax  
17 evasion for 2002 and 2003 tax years. (Case No. 2:08-cr-00494-SJO).

18 34. On September 23, 2009, Francis agreed to plead guilty to two  
19 misdemeanor counts of filing a personal income tax return and an  
20 amended personal income tax return for 2003 that were false as to a  
21 material matter.

22 35. On November 6, 2009, the IRS served a Notice of Levy on Morgan  
23 Stanley for Francis' tax liabilities, on the grounds that Rothwell is  
24 Francis' "nominee."

25 36. Initially, neither Hallmark, Rothwell, nor Trowbridge was advised  
26 that a levy had been served on Rothwell's Morgan Stanley account.  
27 Trowbridge says he learned about the levy in early 2010.

28

1 37. On December 31, 2009, in compliance with the IRS nominee levy on  
2 Rothwell's account, Morgan Stanley liquidated Rothwell's Morgan  
3 Stanley investment account and surrendered the funds to the U.S.  
4

5 **B. Conclusions of Law**

6 1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §  
7 1346(e) as a civil action brought against the United States under 28  
8 U.S.C. § 7426. Venue is proper in this district pursuant to 28 U.S.C.  
9 § 1391 and 28 U.S.C. § 1402(b), as the subject property is located  
10 within this Central District of California.

11 2. Where a taxpayer neglects to pay an assessed tax liability after  
12 it has been demanded, a lien for the unpaid tax arises in favor of the  
13 U.S. on all property or property rights belonging to the taxpayer. 26  
14 U.S.C. § 6321. Property held by a third party is nonetheless subject  
15 to this lien where the taxpayer holds an interest in the property,  
16 such as where the third party is taxpayer's alter ego, or holds the  
17 property as a nominee. *See G.M. Leasing Corp. v. United States*, 429  
18 U.S. 338, 350-51 (1977); *Scoville v. United States*, 250 F.3d 1198,  
19 1202-03 (8th Cir. 2001).

20 3. Federal statute allows a party other than the delinquent taxpayer  
21 to challenge a levy pursuant to a tax lien as wrongful. 26 U.S.C. §  
22 7426. A levy upon property in which the taxpayer does not have an  
23 interest is wrongful. *Sessler v. United States*, 7 F.3d 1449, 1451 (9th  
24 Cir. 1993).

25 4. In a "wrongful levy" action under 26 U.S.C. § 7426, state law is  
26 applied to determine whether the taxpayer holds an interest in the  
27 property in question. *See Scoville*, 250 F.3d at 1202; *cf. United*  
28 *States v. Overman*, 424 F.2d 1142, 1144 (9th Cir. 1970).

1 5. A plaintiff claiming wrongful levy bears the initial burden of  
2 proving title to the property. *LiButti v. United States*, 107 F.3d 110,  
3 118 (2d Cir. 1997).

4 6. Here, there is no dispute that Rothwell had at least bare legal  
5 title to the assets levied from the Morgan Stanley Account, so this  
6 burden is satisfied.

7 7. Once Plaintiff establishes title to the property, the burden  
8 shifts; the government must carry a burden of persuasion to show a  
9 nexus between the taxpayer and the levied property. *Tri-State Equip.*  
10 *v. United States*, 79 A.F.T.R.2d 97-2502 (E.D. Cal. 1997) (citing  
11 *Flores v. United States*, 551 F.2d 1169, 1174-76, n.8 (9th Cir. 1977)).

12 8. Such a nexus is established where the third party held the  
13 property as a nominee or alter ego for the taxpayer. See *G.M. Leasing*  
14 *Corp*, 429 U.S. at 350-51; *Tri-State Equip.*, 79 A.F.T.R. 2d 97-2502  
15 (citing *Valley Fin., Inc. v. United States*, 629 F.2d 162, 171 (D.C.  
16 Cir. 1980), *cert. denied*, 451 U.S. 1018 (1981)). A nominee holds legal  
17 title to property while another retains the benefits of the property.  
18 *Scoville*, 250 U.S. at 1202 (citing *Black's Law Dictionary* (7th ed.  
19 1999)).

20 9. California law recognizes that when property is held by a  
21 nominee, the beneficial owner retains interest in the property. *Lewis*  
22 *v. Hankins*, 214 Cal. App. 3d 195, 201-02 (1989); *Baldassari v. United*  
23 *States*, 79 Cal. App. 3d 267, 272 (1978).

24 10. A third party will be considered a nominee to the extent that the  
25 taxpayer exercises control over the party and its assets. *U.S. v.*  
26 *Bell*, 27 F.Supp. 2d 1191, 1195 (E.D. Cal. 1998) (citing *LiButti*, 107  
27 F.3d at 119). Some factors held by other courts as relevant to  
28 determine control in the nominee analysis include a lack of

1 consideration paid by the nominee for the property, a close  
2 relationship between the taxpayer and the nominee, and continued  
3 enjoyment of the benefits of the property by the taxpayer. *See Bell*,  
4 27 F. Supp. 2d at 1195; *Towe Antique Ford Found. v. I.R.S.*, 791 F.  
5 Supp. 1450, 1454 (D. Mont. 1992).

6 11. For the reasons set out below, the Court finds the government has  
7 carried its burden to demonstrate a nexus between the assets of  
8 Rothwell, Ltd. and Francis. The Court is persuaded that Rothwell held  
9 the levied assets as a nominee for Francis, who retained control over  
10 the assets.

11 12. The government has demonstrated Francis' control over Rothwell's  
12 assets by showing how the management of Rothwell was intertwined with  
13 Francis, and how expenditure of Rothwell's funds by the company was  
14 directed by and for the benefit of Francis.

15 13. Rothwell's director, Chaffe, testified that it is owned by the  
16 Trust, not owned or controlled by Francis. While Francis is not the  
17 record owner of Rothwell, the government has presented evidence that  
18 Rothwell's operations are intertwined with Francis. Some of these  
19 points of contact are relatively innocuous when taken in isolation,  
20 but when considered together, they raise significant questions on the  
21 independence of Rothwell from Francis.

22 14. Chaffe identified Francis as the beneficial owner of Rothwell on  
23 a document filed with the Bermuda Commercial Bank. The fact that  
24 Francis alone was listed, rather than the Trust itself or even a list  
25 of the Trust's beneficiaries, provides some indication that Rothwell  
26 was operated for his benefit.

27 15. Francis held his own investment account at same branch of Morgan  
28 Stanley and used the same broker as the levied Rothwell account. While

1 not improper, this is evidence of how closely Rothwell's operations  
2 were connected with Francis' own.

3 16. Additionally, according to his own testimony, Rayment served as  
4 counsel for Francis during the relevant time period, while also  
5 serving as counsel for Rothwell, the Trust, and all other entities  
6 owned by the Trust, and eventually, Protector of the Trust. Thus,  
7 while he held important roles for Rothwell and its record owner, the  
8 Trust, Rayment owed fiduciary duties to Francis. It appears that while  
9 he held these duties, Rayment acted as Francis' agent, communicating  
10 directives to Chaffe and Trowbridge. This not only calls into question  
11 Rayment's independence when performing roles for Rothwell or the  
12 Trust, but also indicates a possible locus of control employed by  
13 Francis, allowing Francis to communicate his directions indirectly to  
14 Rothwell and Chaffe.

15 17. The deposition testimony of Trowbridge suggests Francis exerted  
16 control over who managed Rothwell. After Trowbridge succeeded Chaffe  
17 and Jordan as Trustees, Chaffe and Jordan nonetheless continued to  
18 direct the operations of Rothwell. Trowbridge admits that he was  
19 uncomfortable with Chaffe and Jordan's continued role, but agreed to  
20 the arrangement at Francis' direction. This arrangement appears to  
21 have reduced Trowbridge's oversight regarding Rothwell's assets,  
22 undermining his effectiveness as an independent trustee.

23 18. Finally, the government produced evidence that, through entities  
24 owned by Francis, Francis effected the transfer of over \$14 million to  
25 Rothwell. Rothwell never provided any consideration to Francis or the  
26 entities for these funds. Other than income or capital gains derived  
27 from investment of the funds contributed through Francis, Rothwell has  
28 provided no evidence of other sources of funding or operations

1 contributing to its assets. This initial source of Rothwell's assets  
2 increases the likelihood that it held assets for Francis' benefit,  
3 especially in light of the use of some of these assets detailed below.  
4 19. Francis' control over Rothwell and its assets is evidenced by the  
5 events surrounding the acquisition and improvement of the Mexico  
6 Property. The only major disbursements made from the levied account  
7 were payments toward the purchase of this property. These payments are  
8 only comprehensible in the context of Francis' efforts to acquire and  
9 improve Lot 14. In the first place, Rothwell made payment for Lot 14  
10 at the request of Francis. Before Francis had even communicated to  
11 Rothwell his desire that the lot be purchased, he had provided a  
12 \$100,000 deposit on the land to Crescent Capital. This suggests little  
13 doubt on his part that Rothwell would make the payment he desired.  
14 Rothwell's characterization that it alone paid the purchase price for  
15 the lots is belied by the Hadid's testimony, detailing the \$495,000  
16 payment Francis made to him for the right to purchase Lot 14. It is  
17 also notable that Rothwell did not take title to the land it  
18 purchased, or receive any other benefit for the funds it expended. Nor  
19 did Rothwell or Casa Blanca exercise control over the improvement of  
20 the property. Instead, Francis directed the construction of the  
21 residence to his specifications, and paid for it through Sands and  
22 Mantra. The subsequent purchase of Lot 13(b) followed the same  
23 pattern. If was purchased with Rothwell's funds, at Francis' request,  
24 for Francis' benefit and deeded to Casa Blanca.

25 20. The sequence of events related above strongly indicates that  
26 despite Francis' lack of formal ownership over Rothwell, he exercised  
27 control over the entity and use of its assets. He not only directed  
28 its expenditures on the Mexico property, but necessarily coordinated

1 those expenditures with his own to purchase and improve the property.  
2 The court is persuaded that the property was purchased at his  
3 direction, in conjunction with his own expenditures, and for his use.

4 21. Due to Francis' apparent influence over Rothwell and its assets,  
5 the Court finds Rothwell held its assets as a nominee for Francis.

6 Rothwell initially received its assets from Francis, made expenditures  
7 at Francis' direction, and the benefits of these expenditures incurred  
8 to Francis. In the face of these indica of control, the Court is  
9 persuaded that a nexus existed between Francis and Rothwell's assets.

10 22. In a wrongful levy action, after the government has established a  
11 nexus between the taxpayer and the property, the burden once again  
12 shifts to the plaintiff. *Arth v. United States*, 735 F.2d 1190, 1193  
13 (9th Cir. 1984). At this point the plaintiff must prove that the  
14 taxpayer holds no ownership over the property. *Id.*

15 23. As discussed above, the Court finds that Rothwell held its assets  
16 as a nominee for Francis, subject to Francis' control. Evidence of  
17 Francis' lack of formal ownership or rights to control Rothwell's  
18 assets fails to rebut this conclusion. Likewise, the Court finds  
19 Chaffe and Rayment's testimony that Francis lacked control over  
20 Rothwell unconvincing in light of the facts established above.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Court grants judgment in favor of  
3 Defendant and against Plaintiff on Plaintiff's claim for wrongful levy  
4 pursuant to 26 U.S.C. § 7426. Counsel for Defendant is directed to  
5 submit a proposed judgment consistent with these Findings of Fact and  
6 Conclusions of Law, not later than Friday, July 8, 2011.

7  
8 **IT IS SO ORDERED.**

9  
10  
11 **JUNE 30, 2011**  
12 Dated



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13 R. Gary Klausner  
14 U.S. District Court Judge  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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HONORABLE R. GARY KLAUSNER, JUDGE PRESIDING

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ROTHWELL, LTD., a Cayman Islands corporation, Case No. 10-cv-00479-RGK-FFM

Plaintiff,

vs.

JUL 22 2011

UNITED STATES OF AMERICA,

Defendant.

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COURT TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

June 14, 2011

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APPEARANCES:

For the Plaintiff: Gabriel L. Cohan  
William A. Cohan

For the Defendant: Darwin Thomas  
Valerie L. Makarewicz

Reported by: Nichole Rhynard, RMR, CRR,  
CA CSR #137256  
Official Court Reporter  
nicholerhynard@yahoo.com

Proceedings recorded by mechanical stenography. Transcript produced by Reporter on computer.

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1 LOS ANGELES, CALIFORNIA; June 14, 2011, 9:37 a.m.

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2  
3 THE CLERK: Calling calendar item number 3, Case  
4 Number SACV10-479-RGK, Rothwell Limited versus United  
5 States.

6 Counsel, please rise and make your appearances.

7 MR. WILLIAM COHAN: Good morning. William Cohan.  
8 With me, Gabriel Cohan, both representing Rothwell Limited.

9 THE COURT: Counsel.

10 MR. THOMAS: Darwin Thomas for defendant.

11 MS. MAKAREWICZ: Valerie Makarewicz on behalf of the  
12 government.

13 THE COURT: Thank you.

14 Both sides ready to proceed?

15 MR. GABRIEL COHAN: Yes, Your Honor, we are.

16 THE COURT: We talked about time limits. This is  
17 about a ten-hour case. You asked to call witnesses out of  
18 order, or at least call him until Thursday.

19 I want to make sure everybody is on line, we'll call that  
20 witness on Thursday morning. Is that correct?

21 MR. GABRIEL COHAN: Yes, Your Honor. We anticipate  
22 he'll be arriving in L.A. from Mexico tomorrow.

23 THE COURT: Anything before we get started  
24 logistically?

25 MR. THOMAS: We have a number of things we need to

1 go through. We have an objection to -- Mr. Rayment is  
2 sitting at counsel table here. He is a percipient witness  
3 and should be excluded during the proceedings. I didn't see  
4 him on the witness list.

5 MR. GABRIEL COHAN: But he's my designated  
6 representative for Roth Limited. Even though Mr. Chaffe is  
7 indeed the director of Rothwell, Mr. Chaffe will testify.  
8 And then as far as I understand he will be excused to return  
9 home. Mr. Rayment I wish to have with me. He's been  
10 present at all the depositions and throughout discovery.

11 THE COURT: He may stay. He may stay.

12 Next question: Any other issues?

13 Counsel, do you wish to proceed with opening?

14 Anything else?

15 MR. THOMAS: We do have certain questions we have to  
16 address. One is we don't have the pretrial order entered  
17 yet, Your Honor. Has it been signed by the Court and --

18 THE COURT: I don't think we need it, Counsel. This  
19 is a court trial.

20 MR. THOMAS: We have a lot of stipulated facts in  
21 the pretrial order that will be --

22 THE COURT: And both of you have stipulated, and I'm  
23 assuming you'll just live by your stipulations.

24 MR. THOMAS: Sure.

25 MR. WILLIAM COHAN: We do have a lengthy list of

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

11-56430

THE HONORABLE R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

ROTHWELL, LTD., )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 DEFENDANT. )

NO. SACV-10-00479-RGK

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
LOS ANGELES, CALIFORNIA  
MONDAY, JUNE 6, 2011; 10:04 A.M.  
PRETRIAL CONFERENCE

MARY RIORDAN RICKEY  
OFFICIAL COURT REPORTER  
255 EAST TEMPLE STREET  
ROOM 181-G  
LOS ANGELES, CA 90012  
MARY.USDC@YAHOO.COM

1 HAVE CONTROL OF THE TRUST, THEN ROTHWELL'S IN TROUBLE. SO  
2 IT'S A VERY SIMPLE ISSUE.

3 WE ALSO HAVE EXPERT WITNESSES TESTIFYING AS TO  
4 LAW, ON NUMBER ONE, NINE, AND TEN OF THE PLAINTIFF'S  
5 WITNESSES.

6 I CAN TELL YOU RIGHT NOW NOBODY TESTIFIES AS AN  
7 EXPERT AS TO THE LAW. THERE'S ONLY ONE EXPERT OF THE LAW,  
8 AND THAT'S THE JUDGE OF THE COURT HEARING THE CASE.

9 IF YOU WANT TO SUBMIT REQUESTS TO TAKE JUDICIAL  
10 NOTICE, I HAVE NO PROBLEM. YOU SHOULD DO THAT BEFORE THE  
11 TRIAL. BUT NOBODY COMES IN AND TELLS THE COURT WHAT THE LAW  
12 IS. THAT'S SOMETHING THE COURT HAS TO DECIDE.

13 THEN WE HAVE MANY WITNESSES OR SOME WITNESSES --  
14 ONE AND SEVEN, I BELIEVE, OF THE GOVERNMENT -- TESTIFYING AS  
15 TO THE INVESTIGATION OF THE FRAUD AND ALL. THAT'S NOT  
16 BEFORE THE COURT AT THIS TIME.

17 WHAT'S BEFORE THE COURT IS CONTROL OVER THE TRUST.  
18 I'M NOT SAYING YOU CAN'T CALL ANY OF THESE WITNESSES. YOU  
19 CAN CALL ANY WITNESS YOU WANT, AND THE COURT WILL RULE ON  
20 OBJECTIONS ON IT.

21 BUT I GIVE TIME PERIODS FOR THOSE DIFFERENT AREAS.  
22 AND IF YOU WANT TO CALL THIRTEEN WITNESSES TO TESTIFY TO ONE  
23 AREA, I DON'T CARE. YOU CAN DO IT WITH ONE WITNESS. BUT  
24 I'M GIVING YOU TIME LIMITS ON IT, AND LET ME JUST TALK TO  
25 YOU AND WAIT UNTIL THE END BEFORE YOU GET TOO UPSET.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SA CV 10-00479-RGK (FFMx) Date June 6, 2011  
Title ROTHWELL LTD. v. UNITED STATES OF AMERICA

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams	Mary Rickey	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

William Cohan  
Gabriel Cohan

Attorneys Present for Defendants:

Darwin Thomas  
Valerie Makarewicz

Proceedings: PRETRIAL CONFERENCE

Case called. Court and counsel confer.

Court gives tentative time limits of 5 hours for the plaintiff and 5 hours for the defendant.

Counsel for plaintiff addresses the Court regarding availability of an expert witness. The witness shall be permitted to testify on the morning of June 16, 2011.

Court and counsel confer regarding testimony of other witnesses. Witness Chaffe shall testify in person. Witnesses Foley, Trowbridge and Welker's testimony may be presented by video deposition, with transcripts provided to the Court.

An estimated 2 day Court Trial remains on calendar for June 14, 2011 at 9:00 a.m.

IT IS SO ORDERED.

Initials of Preparer \_\_\_\_\_ : \_\_\_\_\_ 18  
slw

1 ANDRÉ BIROTTE JR.  
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 2 SANDRA R. BROWN  
 Assistant United States Attorney  
 3 Chief, Tax Division  
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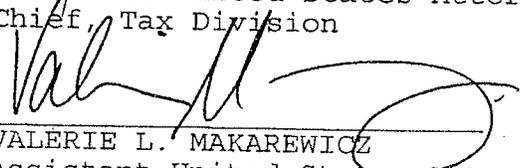
8 Attorneys for the United States of America  
 9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA  
 11 WESTERN DIVISION

12 ROTHWELL, LTD., a Cayman Islands) No. CV 10-479 RGK (FFMx)  
 Corporation, )  
 13 )  
 Plaintiff, ) NOTICE OF LODGING  
 14 )  
 vs. )  
 15 )  
 UNITED STATES, )  
 16 )  
 Defendant. )  
 17 )  
 18 )

19 The UNITED STATES OF AMERICA hereby gives notice of the  
 20 lodging of the Final Pretrial Conference Order, filed  
 21 concurrently herein.

22 Respectfully submitted,  
 ANDRÉ BIROTTE JR.  
 United States Attorney  
 23 SANDRA R. BROWN  
 Assistant United States Attorney  
 24 Chief, Tax Division

25 DATED: 5/24/11

26   
 VALERIE L. MAKAREWICZ  
 Assistant United States Attorney  
 27  
 28

1 ANDRÉ BIROTTE JR.  
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10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION  
13

14 ROTHWELL, LTD., a Cayman  
Islands Corporation,

15 Plaintiff,

16 v.

17 UNITED STATES OF AMERICA,

18 Defendant.

Case No. CV 10-479-RGK(FFMx)

FINAL PRETRIAL CONFERENCE  
ORDER

Pretrial Conference:

Date: June 6, 2011

Time: 9:00 a.m.

Ctrm: 850

Roybal U.S. Courthouse

255 East Temple St.

Los Angeles, CA 90012

21  
22 Following pretrial proceedings, pursuant to Rule 16, Federal Rules of Civil  
23 Procedure and Local Rule 16, IT IS ORDERED:

24 1. Parties and Pleadings. The parties are the plaintiff Rothwell, Ltd., a  
25 Cayman Islands Corporation, and defendant United States of America.

26 Each of these parties has been served and has appeared.

27 The pleadings which raise the issues are: (i) plaintiff's Complaint For  
28 Wrongful Levy Pursuant To 26 U.S.C. §7426, and (ii) defendant's Answer To

1 Complaint For Wrongful Levy Pursuant To 26 U.S.C. §7426 By United States Of  
2 America.

3 2. Jurisdiction and Venue. Federal jurisdiction and venue are invoked upon  
4 the following grounds: the action asserts a wrongful levy on plaintiff's property by  
5 the Internal Revenue Service (26 U.S.C. § 7426), the action arises under the laws of  
6 the United States (28 U.S.C. § 1331), and the property that is the subject of the action  
7 was levied on by the IRS when it was situated in the Central District of California (28  
8 U.S.C. § 1391(b)(2)). The facts requisite to federal jurisdiction are admitted.

9 3. Trial Estimate. While the Government believes that it will take less time,  
10 Plaintiff estimates that the trial will take 5 court days.

11 4. Non-Jury Trial. The trial is to be a non-jury trial. At least seven (7) days  
12 prior to the trial date, each party shall lodge and serve by e-mail, fax, or personal  
13 delivery the findings of fact and conclusions of law the party expects the Court to  
14 make upon proof at the time of trial as required by L.R. 52-1.

15 5. Admitted Facts. The following facts are admitted and require no proof:

16 A. The Francis Trust indenture was drafted and created by Owen Foley,  
17 Attorney at Law and partner in the law firm of Misick & Stanbrook,  
18 Richmond House, P.O. Box 127, Providenciales, Turks & Caicos  
19 Islands, B.W.I.; <http://www.misickstanbrook.tc>.

20 B. Owen Foley, Esq. graduated from the University College of Dublin,  
21 Ireland, with a degree of bachelor of civil law in 1978 and after that was  
22 educated at the Law School of the Incorporated Law Society of Ireland  
23 in Dublin, where he was admitted a solicitor of the High Court of  
24 Ireland in 1982, which is the highest court in Ireland. Mr. Foley has  
25 been practicing and licensed to practice law in the Turks and Caicos  
26 Islands, B.W.I. since April, 1988. Mr. Foley considers himself to be an  
27 expert in Turks & Caicos trust law.

28 C. Hallmark Trust, Ltd., Prestige Place, Grace Bay Road, P.O. Box 656,

1 Providenciales, Turks & Caicos Islands, B.W.I., was selected to provide  
2 Trustee services for The Francis Trust.

3 D. The Francis Trust was settled on May 24, 1999, by and between Joseph  
4 Raymond Francis, Settlor, and Hallmark Trust Ltd., Trustee.

5 E. Pursuant to the terms of The Francis Trust, the Turks & Caicos Islands  
6 is the trust's place of administration and its provisions are construed by  
7 the laws of the Turks & Caicos Islands.

8 F. Pursuant to the provisions of The Francis Trust all power and discretion,  
9 including decisions concerning investments and/or disbursements, is  
10 determined at the sole discretion of the Trustee, with the exception of  
11 specified powers noted within the Schedules of the Trust which need the  
12 permission of the protector.

13 G. At its inception, Joseph Francis was the Settlor of The Francis Trust and  
14 the designated Trustee was Hallmark Trust Limited. Hallmark Trust  
15 Limited is a trust company with which Mr. Foley had done business  
16 prior to May 24, 1999.

17 H. Trustees are entitled to reimbursement in accordance with the terms and  
18 conditions of The Francis Trust.

19 I. The Francis Trust has had two protectors: (1) Brian Rayment, Esq., an  
20 attorney licensed to practice in Oklahoma; and (2) Pittsford, Ltd., a  
21 British Virgin Islands Company.

22 J. Pursuant to the terms of the Francis Trust, the trustee needs the  
23 protector's permission to pay any distribution to a beneficiary.

24 K. Pursuant to the terms of The Francis Trust, any disposition of funds is  
25 subject to approval of The Francis Trust protector if the disposition  
26 exceeds \$10,000.

27 L. On May 2, 1999 and May 24, 1999, Settlor Joseph Francis provided a  
28 "Letter of Wishes" to the Trustee, Hallmark Trust, Ltd.

- 1 M. The Francis Trust beneficiaries are Joseph Francis, his parents and  
2 children and Oklahoma Film Holding Corporation, a non-profit  
3 corporation owned by Joseph R. Francis.
- 4 N. The parties are unaware whether Joseph R. Francis presently has any  
5 children.
- 6 O. In 1991, Colin R. Chaffe ("Chaffe") and Nicola S. Jordan ("Jordan")  
7 incorporated Hallmark Trust, Ltd., in the Turks & Caicos Islands.
- 8 P. Colin Chaffe became trustee of the trust and director of Rothwell, Ltd.  
9 personally in 2010 when Hallmark Trust resigned as trustee and director  
10 of Rothwell, Ltd.
- 11 Q. Mr. Chaffe and Ms. Jordan are British citizens and are residents of the  
12 Turks & Caicos Islands.
- 13 R. From June 9, 2000, to November 29, 2005, Chaffe and Jordan  
14 controlled, directed and managed the operations, finances, assets and  
15 investment decisions of Rothwell, Ltd.
- 16 S. According to Mr. Chaffe and Mr. Francis, neither has ever met the other.
- 17 T. On June 9, 2000, Colin Chaffe incorporated Rothwell Limited in the  
18 Cayman Islands. One hundred percent (100%) of Rothwell, Ltd.'s shares  
19 are held by Inceptre Holdings, Ltd., in trust for The Francis Trust.
- 20 U. On or about June 2, 2001, Chaffe and Jordan opened a Morgan Stanley  
21 (fka Dean Witter) investment account for Rothwell, Ltd. in Irvine,  
22 California.
- 23 V. Inceptre Holdings, a Turks & Caicos Islands corporation, is Hallmark  
24 Trust, Ltd.'s nominee company.
- 25 W. Inceptre Holdings, Ltd., was incorporated in the Turks & Caicos Islands  
26 on March 5, 1992. The sole shareholders were and are Colin R. Chaffe  
27 (50 shares) and Nicola S. Jordan (50 shares).
- 28 X. Inceptre Holdings acted as director of Rothwell, Ltd., until 2003 when

- 1 Hallmark Trust Ltd. became the director of Rothwell, Ltd.
- 2 Y. In 2001, Chaffe and Jordan opened a bank account for Rothwell, Ltd. at  
3 the Bermuda Commercial Bank in Hamilton, Bermuda.
- 4 Z. Beginning in 2001, Rothwell entered into various distribution and  
5 licensing contracts with West Direct.
- 6 AA. Funds were transferred from Rothwell's Bermuda bank account by wire  
7 to Rothwell's Morgan Stanley account.
- 8 BB. Chaffe and Jordan were signatories to Rothwell's Morgan Stanley  
9 account until late 2005.
- 10 CC. During 2002 Sands Media, Inc., a U.S. corporation all shares of which  
11 were owned by Joseph Francis, wired \$1,950,000 to Rothwell's Bermuda  
12 bank account.
- 13 DD. During 2003 Sands Media, Inc., a U.S. Corporation all shares of which  
14 were owned by Joseph Francis, wired \$8,461,020.00 to Rothwell's  
15 Bermuda bank account.
- 16 EE. Chaffe and Jordan sold 100% of their interests in Hallmark Trust, Ltd.  
17 to Brian Trowbridge, a Canadian citizen, attorney and resident of the  
18 Turks & Caicos Islands, B.W.I., who changed the name to Hallmark  
19 Bank and Trust, Ltd.
- 20 FF. On November 29, 2005, Hallmark Bank and Trust, Ltd., P.O. Box 656,  
21 Tropicana Plaza, Providenciales, Turks & Caicos Islands, B.W.I.,  
22 became director of Rothwell and continued to do so until March, 2010,  
23 when Hallmark Bank and Trust, Ltd. resigned and Colin Chaffe was  
24 appointed Trustee of The Francis Trust and Director of Rothwell, Ltd.
- 25 GG. According to Brian Trowbridge, Brian Trowbridge never met Joseph  
26 Francis nor spoke to him.
- 27 HH. Trowbridge and Hallmark Bank and Trust, Ltd. directors and officers  
28 were signatories on Rothwell's Morgan Stanley account.

1 II. From July 2001, through October 2008, John Welker was the broker  
2 responsible for Rothwell's Morgan Stanley account.

3 JJ. Welker does not recall that Chaffe told Welker that he had spoken with  
4 Joseph Francis or anybody acting on Joseph Francis' behalf.

5 KK. Welker never discussed the Rothwell Morgan Stanley account with  
6 Joseph Francis.

7 LL. Joseph Francis did not have signatory authority on Rothwell, Ltd.'s  
8 Morgan Stanley account.

9 MM. In connection with the Internal Revenue Service's criminal investigation  
10 of Joseph Francis, I.R.S. Special Agent Mark Jensen issued IRS  
11 summonses to Morgan Stanley for information concerning Rothwell,  
12 Ltd.'s account in May and July, 2006.

13 NN. Brian Trowbridge stated that he was not advised of the summonses by  
14 either the IRS or Morgan Stanley.

15 OO. On April 11, 2007, Joseph Francis was indicted inter alia on two counts  
16 of tax evasion (26 U.S.C. §7201) for 2002 and 2003 tax years.

17 PP. On September 2, 2008, Michael Nahass, Complex Branch Manager for  
18 Morgan Stanley, sent a letter to Brian Trowbridge and Rothwell, Ltd.,  
19 requesting that Rothwell, Ltd.'s account be transferred to another  
20 financial institution no later than October 6, 2008, and further stated that  
21 no further deposits would be accepted into the account.

22 QQ. IRS Special Agent Mark Jensen interviewed John Welker on August 17,  
23 2006 concerning Rothwell's Morgan Stanley account and whether Joseph  
24 Francis was involved with and/or controlled the Rothwell Morgan  
25 Stanley account.

26 RR. According to Nahass, Morgan Stanley's September 2, 2008, letter did not  
27 inform Rothwell that its account had been "red flagged" aka "frozen,"  
28 which meant to him "no money in, no money out."

- 1 SS. According to Michael Nahass, Rothwell's account had been "frozen" by  
2 Morgan Stanley's legal department prior to the time he began as Welker's  
3 supervisor in June 2008.
- 4 TT. On February 19, 2009, and on August 14, 2009, IRS Special Agent Mark  
5 Jensen served subpoenas on Morgan Stanley for production of records on  
6 Rothwell's Morgan Stanley account. Neither the IRS nor Morgan Stanley  
7 gave notice of the 2009 IRS subpoenas to Rothwell, Ltd.
- 8 UU. Other than the September 2, 2008, letter, Mr. Nahass did not recall ever  
9 having any communications with Mr. Trowbridge.
- 10 VV. Brian Stewart became the Morgan Stanley broker on the Rothwell  
11 account in 2009.
- 12 WW. Stewart testified that Rothwell's account had been "red flagged," which  
13 meant that no money could be paid out of the account, they could only  
14 take liquidating orders.
- 15 XX. Stewart testified that he did not know whether Morgan Stanley had given  
16 notice to Trowbridge or anyone else on Rothwell's behalf that the  
17 account had been red-flagged. Stewart does not recall any  
18 communications notifying Rothwell that there would be no  
19 disbursements from the account.
- 20 YY. Brian Stewart spoke 2 to 3 times on the telephone and via email with  
21 Brian Trowbridge; he recalled talking to Mr. Trowbridge, who requested  
22 an updated statement.
- 23 ZZ. Trowbridge sent a facsimile on December 1, 2009, and an email on  
24 December 21, 2009, to representatives at Morgan Stanley, advising that  
25 he would be liquidating the account after the start of the new year.
- 26 AAA. Stewart did not discuss the IRS's levy on Rothwell's account with  
27 Trowbridge.
- 28 BBB. Stewart assumed that Morgan Stanley's legal department was handling

1 notification of the IRS levy to Trowbridge.

2 CCC. Stewart was involved with other Morgan Stanley accounts for Joseph  
3 Francis.

4 DDD. According to Stewart, Stewart never had any discussion with Joseph  
5 Francis concerning the Rothwell account before the "nominee" levy on  
6 November 6, 2009, on Rothwell's account.

7 EEE. Following the levy, Stewart spoke to Joseph Francis several times, alone  
8 and with his lawyer, who requested information about "time stamps" and  
9 a copy of the levy. According to Stewart, Joseph Francis did not ask  
10 what Rothwell's account balance was or for Rothwell's accounting  
11 statements.

12 FFF. On November 16, 2009, Stewart faxed a copy of the IRS levy on  
13 Rothwell, Ltd.'s account to Joseph Francis.

14 GGG. On September 23, 2009, Joseph Francis agreed to plead guilty in his  
15 criminal matter (Case No. 2:08-cr-00494-SJO), to two misdemeanor  
16 counts of filing a personal income tax return and an amended personal  
17 income tax return for 2003 that were false as to a material matter in that  
18 both omitted from the Schedule B the interest income earned on  
19 Rothwell, Ltd.'s Morgan Stanley account.

20 HHH. On November 6, 2009, Judge Otero of this Court accepted Joseph  
21 Francis' guilty plea to inter alia two misdemeanor counts of filing false  
22 tax returns and sentenced Joseph Francis according to the binding Plea  
23 Agreement (CR#465). On or before that date, Francis paid in full all  
24 restitution, fines and assessments required by the plea agreement.

25 III. A few hours later on November 6, 2009, IRS Revenue Officer Farrell  
26 Stevens served a Notice of Levy on Morgan Stanley, for the tax liabilities  
27 owed by Joseph R. Francis, on the grounds that Rothwell, Ltd. is Joseph  
28 R. Francis's "nominee."

1 JJJ. Initially, neither Hallmark Bank and Trust, Ltd., Rothwell, Ltd. nor  
2 Trowbridge were advised that a levy had been served on Rothwell's  
3 Morgan Stanley account. Trowbridge says he learned about the levy in  
4 early 2010.

5 KKK. Joseph Francis is the founder of Girls Gone Wild entertainment business  
6 and the sole shareholder of two U.S. corporations, Sands Media, Inc. and  
7 Mantra Films, Inc., which are engaged in producing, promoting,  
8 marketing and distributing DVDs, infomercials, magazines, apparel and  
9 other items.

10 LLL. On March 3, 2008, Joseph Francis obtained a \$5 million dollar loan from  
11 Washington Mutual Bank, by using Joseph Francis' personal Los  
12 Angeles residence owned by Blue Horse Trading, LLC, as collateral.

13 MMM. On November 5, 2002, Blue Horse Trading, LLC purchased Joe Francis'  
14 Los Angeles residence. The initial deposits for the purchase of the  
15 property were made by Joseph Francis, but the final purchase amount of  
16 \$5,450,000 was paid by Blue Horse Trading from a transfer it received  
17 from Joseph Francis' personal account with Morgan Stanley.

18 NNN. Since Blue Horse Trading, LLC is a separate legal entity from Joseph  
19 Francis, the property would not be immediately, or possibly ever, subject  
20 to an IRS lien.

21 OOO. On March 13, 2002, a \$1.030 million dollar payment was made from  
22 Rothwell's Bermuda Commercial Bank account to fund the purchase of  
23 Lot #14; and (2) on September 5, 2005 and September 12, 2005, the total  
24 of a \$1.023 million dollar payment was made from Rothwell's Morgan  
25 Stanley account to fund the purchase of Lot #13B, both of which are  
26 located in "Ranchos Punta Mita," in the Municipality of Bahia de  
27 Banderas, State of Nayarit, Mexico.

28 PPP. Chaffe made the decision to purchase the property in Mexico and set up

1 the Mexican corporation in consultation with the Protector of the Trust,  
2 Brian Rayment. The Francis Trust protector, Brian Rayment, brought the  
3 investment opportunity to Chaffe.

4 QQQ. Morgan Stanley monthly and annual statements for Rothwell, Ltd.'s  
5 account state that the only two disbursements from the Morgan Stanley  
6 account, from July, 2001, to the date of the IRS levy (11/6/09) were the  
7 two disbursements totaling \$1.023 million dollars on September 5, 2005  
8 and September 12, 2005.

9 RRR. The \$1.023 million dollars involved two wire transfers on September 5,  
10 2005 and September 12, 2005, to purchase Lot # 13B for Casa Blanca de  
11 Punta Mita, S.A. de C.V.

12 SSS. Two disbursements were made from the Morgan Stanley account, which  
13 occurred in 2005 for the purchase of Lot 13B in Mexico.

14 TTT. In 2002, Colin Chaffe, a principal of Hallmark Trust, Ltd., the Trustee  
15 of The Francis Trust, retained Brian Rayment, Esq., to arrange for the  
16 establishment of a Mexican corporation and the purchase of Lot #14; in  
17 2005, acting in the same capacities, Mr. Chaffe engaged Mr. Rayment to  
18 purchase Lot #13B for the Mexican Corporation.

19 UUU. Island Films, Ltd. and Summerland Holdings, Ltd. are Turks and Caicos  
20 Islands corporations, the shares of which are owned 100% by The  
21 Francis Trust, but Island Films was once owned by Joseph Francis.

22 VVV. Casa Blanca is the owner and deed holder of Lot #13B.

23 WWW. Casa Blanca entered into a private purchase agreement to, and did  
24 purchase, Lot #14, from Cantiles de Mita, S.A. de C.V., a Mexican  
25 corporation.

26 XXX. The foregoing acquisition of Lot 14 by Casa Blanca was conducted  
27 through Stewart Title escrow and Stewart Title issued title insurance on  
28 Lot #14.

- 1 YYY. Stewart Title International provided title insurance to Casa Blanca on  
2 both Lots 13B and 14.
- 3 ZZZ. Joseph Francis directed and controlled the design and construction of the  
4 premises and improvements made on Casa Blanca's Lot #14.
- 5 AAAA. Mantra Films, Inc. and Sands Media, Inc. provided the funds to develop  
6 and improve Casa Blanca's Lot #14 as follows: (1) during 2002 Mantra  
7 Films paid \$1,002,141.50; (2) during 2002 Sands Media paid  
8 \$400,000.00; (3) during 2003 Mantra Films paid \$850,000.00; and (4)  
9 during 2003 Sands Media paid \$3,076,070.02.
- 10 BBBB. Joseph Francis, Sands Media, Inc. and Mantra Films, Inc. use Casa  
11 Blanca's property.
- 12 CCCC. Rothwell, Ltd. provided a little over \$2 million dollars for Casa Blanca  
13 to purchase the two lots in Mexico. Mantra Films, Inc. and Sands Media,  
14 Inc. provided \$5.3 million dollars to improve Casa Blanca's Lot #14.
- 15 DDDD. On December 31, 2009, in compliance with the IRS nominee levy on  
16 Rothwell's account, Morgan Stanley liquidated Rothwell's Morgan  
17 Stanley investment account and surrendered the funds to the United  
18 States, as follows: (1) December 31, 2009, Check #27603880 in the sum  
19 of nineteen million four hundred twelve thousand four hundred  
20 twenty-seven dollars and twenty-one cents (\$19,412,427.21); (2) January  
21 4, 2010, Check #27603884 in the sum of six hundred ninety thousand  
22 five hundred seventy one and twenty-one cents (\$690,571.21); and (3)  
23 January 5, 2010, Check #27603887 in the sum of three hundred one  
24 thousand six hundred thirty-nine dollars and seventy-nine cents  
25 (\$301,639.79). Exhibit 11, MSSB 003393-3398.
- 26 EEEE. On January 8, 2010, IRS District Counsel sent an e-mail to Morgan  
27 Stanley's counsel confirming receipt of \$19,412,427.21 on January 5,  
28 2010, \$690,571.21 on January 5, 2010 and \$301,630.79 on January 6,

1 2010.

2 FFFF. For each of the calendar years 2002 and 2003 Sands Media, Inc.,  
3 (Sands”), filed a U.S. Income Tax Return for an S-Corporation, Form  
4 1120-S, with the IRS reporting its income for each respective year.

5 GGGG. For each of the calendar years 2002 and 2003 Mantra Films, Inc.  
6 (“Mantra”), filed a U.S. Income Tax Return for an S-Corporation, Form  
7 1120-S, with the IRS reporting its income for each respective year.

8 HHHH. During 2002 and 2003 all the shares of Mantra and Sands were wholly  
9 owned by Joseph Francis (“taxpayer”).

10 IIII. As the owner of all the shares of Mantra and Sands, the taxpayer reported  
11 the profits or losses from the corporations directly on his U.S. Individual  
12 Income Tax Returns for 2002 and 2003.

13 JJJJ. In or about November 2002 Sands entered into an agreement with Asia  
14 Pacific Mutual Insurance Company (“APMIC”) which states that APMIC  
15 would provide Sands with certain insurance coverage for the period from  
16 November 16, 2002 to November 15, 2003, and references “Policy  
17 Number S288628864046M.”

18 KKKK. At or near the end of 2002 APMIC issued a Premium Invoice in the  
19 amount of \$3,000,000 to “Sands Media, Inc., Joseph Francis” to be paid  
20 in “Installments - \$250,000 per week beginning December 24, 2002,”  
21 referencing “Policy Number S288628864046M.”

22 LLLL. During the year 2003, between the dates of January 28, 2003 and June  
23 20, 2003, Sands made twelve \$250,000 payments, for a total of  
24 \$3,000,000 to APMIC’s Bank of Hawaii account, number 0080-467036.

25 MMMM. On its 2003 U.S. Income Tax Return for an S-Corporation Sands  
26 deducted ten monthly accruals of \$250,000 each for the months ended  
27 January 31, 2003 through October 31, 2003, for a total of \$2,500,000, for  
28 insurance expenses for the APMIC policy.

1 NNNN. In or about November 2002 Mantra entered into an agreement with Asia  
2 Pacific Mutual Insurance Company ("APMIC") which states that APMIC  
3 would provide Mantra with certain insurance coverage for the period  
4 from November 16, 2002 to November 15, 2003, and references "Policy  
5 Number M28862886893F.

6 OOOO. At or near the end of 2002 APMIC issued a Premium Invoice in the  
7 amount of \$2,000,000 to "Mantra Films, Inc., Joseph Francis" to be paid  
8 in "Installments - \$250,000 per week beginning December 24, 2002,"  
9 referencing "Policy Number M28862886893F.

10 PPPP. During the year 2003, between the dates of January 28, 2003 and April  
11 21, 2003, Mantra made eight \$250,000 payments, for a total of  
12 \$2,000,000 to APMIC.'s Bank of Hawaii account, number 0080-367036.

13 QQQQ. On its 2003 U.S. Income Tax Return for an S-Corporation Mantra  
14 deducted ten monthly accruals of \$166,666.67 each for the months ended  
15 January 31, 2003 through October 31, 2003, for a total of \$1,666,667, as  
16 insurance expenses for the APMIC policy.

17 RRRR. During the period from January 30, 2003 to July 25, 2003, APMIC made  
18 eleven transfers totaling \$4,746,386 from its account at the Bank of  
19 Hawaii, number 0080-367036, to an Abbey National Bank account,  
20 number 0550722, for credit to Schedule Company.

21 SSSS. Schedule Company was a nominee company used by Colin Chaffe and  
22 Hallmark Trust, Ltd., in carrying on the business activities of Hallmark  
23 Trust, Ltd.

24 TTTT. In August and September 2003, APMIC made two transfers totaling  
25 \$166,201 from its account at the Bank of Hawaii, number 0080-367036,  
26 to a Bermuda Commercial Bank account, number 0011067329, for credit  
27 to Schedule Company.

28 UUUU. Between February 18, 2003 and August 4, 2003, eight fund transfers

1 totaling \$4,489,050 were made from Schedule Company into plaintiff's  
 2 account number 068 00 040655 at Bermuda Commercial Bank in  
 3 Hamilton, Bermuda.

4 VVVV. Between December 4, 2002 and April 23, 2003, Sands made the  
 5 following wire transfers to plaintiff's account number 068 00 040655 at  
 6 Bermuda Commercial Bank:

Date	Amount
12/04/2002	\$ 500,000
12/13/2002	\$ 750,000
12/20/2002	\$ 700,000
01/31/2003	\$ 750,000
02/06/2003	\$ 750,000
02/07/2003	\$ 500,000
04/01/2003	\$ 750,000
04/04/2003	\$ 250,000
04/23/2003	\$ 5,461,020
Total	\$10,411,020

17 WWW. Between December 13, 2002 and November 12, 2003, Sands made the  
 18 following payments to Crescent Capital:

Date	Amount
12/13/2002	\$ 400,000
01/28/2003	\$ 400,000
02/25/2003	\$ 400,000
03/25/2003	\$ 400,000
04/17/2003	\$ 400,000
04/17/2003	\$ 50,000
05/19/2003	\$ 75,000
05/28/2003	\$ 400,000
06/19/2003	\$ 50,000

1	06/27/2003	\$ 200,000
2	07/07/2003	\$ 50,000
3	07/14/2003	\$ 50,000
4	07/21/2003	\$ 50,000
5	07/28/2003	\$ 50,000
6	08/04/2003	\$ 50,000
7	08/14/2003	\$ 100,000
8	08/20/2003	\$ 100,000
9	10/01/2003	\$ 200,000
10	10/22/2003	\$ 200,000
11	11/12/2003	\$ 100,000
12	11/21/2003	\$ 59,290
	Total	\$ 3,784,290

XXXX. Sands accrued the payments of \$10,411,020 it made to plaintiff's Bermuda Commercial Bank account between December 4, 2002 and April 23, 2003, and \$3,784,290 of payments it made to Crescent Capital between December 13, 2002 and November 21, 2003, as set forth in the two immediately preceding subparagraphs, and claimed the total of those expenditures, \$14,195,310, as "consulting" expenses on its 2002 U.S. Income Tax Return for an S Corporation.

YYYY. During March and July 2002 Mantra made the following payments by check to Crescent Capital which Mantra accrued in its records as expenses for professional services and deducted on its 2002 U.S. Income Tax Return for an S Corporation:

Date	Check No.	Amount
03/11/2002	4427	\$ 10,000
03/15/2002	4425	\$ 100,000
03/15/2002	4428	\$ 400,000
07/12/2002	4832	\$ 50,000

	Total	\$ 560,000
--	-------	------------

ZZZZ. In 2002 Mantra made three payments to Casablanca de Punta Mita S.A. de C.V., including two payments by check in the amounts of \$150,000 and \$250,000, and one wire transfer in the amount of \$43,141.50, which Mantra accrued in its records as expenses for "footage."

AAAAA. On or about February 3, 2002, Joseph Francis provided Crescent Capital with a personal check for \$100,000 as a security deposit in connection with the purchase of Lot 14 at the Punta Mita development in Mexico.

BBBBB. Through an escrow that closed on or about April 10, 2002, Casa Blanca de Punta Mita S.A. de C.V. purchased Lot 14 at the Punta Mita development.

CCCCC. The purchase price for Lot 14 at the Punta Mita development was \$1,054,980, with \$1,030,000 of that amount paid by plaintiff and \$24,980 paid by Hallmark Trust Limited.

DDDDD. On or about September 13, 2005, Casa Blanca de Punta Mita S.A. de C.V. purchased Lot 13B at the Punta Mita development.

EEEEEE. The cost to purchase Lot 13B at the Punta Mita development was \$1,023,023.65, which was paid by two wire transfers from plaintiff's account with Morgan Stanley in the amounts of \$323,023.65 on September 8, 2005, and \$700,000 on September 12, 2005.

FFFFF. During the period from May 10, 2002, to August 11, 2003, the following eighteen wire transfers were made from plaintiff's Bermuda Commercial Bank account into plaintiff's Morgan Stanley account, except that the transfer on October 30, 2002, was made from an account of Island Films, Ltd.

Date	Amount
05/10/2002	\$ 500,000

1	10/30/2002	\$ 299,980
2	10/31/2002	\$ 350,000
3	12/12/2002	\$ 499,980
4	12/19/2002	\$ 499,980
5	12/24/2002	\$ 499,980
6	02/04/2003	\$ 749,980
7	02/10/2003	\$ 749,980
8	02/12/2003	\$ 724,880
9	02/19/2003	\$ 887,220
10	03/10/2003	\$ 487,370
11	04/02/2003	\$ 674,970
12	04/22/2003	\$ 1,449,830
13	04/29/2003	\$ 5,000,000
14	05/06/2003	\$ 500,000
15	06/05/2003	\$ 449,810
16	07/21/2003	\$ 899,910
17	08/11/2003	\$ 224,910
18	Total	\$15,448,780

GGGGG. On April 11, 2007, a federal grand jury in the District of Nevada indicted Francis on two counts of tax evasion in violation of 26 U.S.C. § 7201 for taxable years 2002 and 2003. On September 23, 2009, in the case entitled United States v. Joseph R. Francis, CR 08-494-SJO (U.S.D.C., C.D. Ca.), Francis pled guilty to a three-count Information. Francis admitted to two violations of 26 U.S.C. § 7207 with respect to the 2003 tax year, admitting that he willfully filed his 2003 U.S. Individual Income Tax Return and his 2003 Amended U.S. Individual Income Tax Return knowing that the returns were false as to a material matter in that they omitted interest income earned on the Rothwell Limited Morgan Stanley account. On November 6, 2009, the Court sentenced Francis for his

1 violations of 26 U.S.C. § 7207.

2 HHHHH. On November 6, 2009, the IRS notified Francis that a determination had  
3 been made that jeopardy existed with respect to the ability of the IRS to  
4 collect his 2001, 2002, and 2003 income tax liabilities. On the same day,  
5 the IRS levied the accounts of Francis and Rothwell at Morgan Stanley,  
6 as the IRS claimed that Rothwell was a nominee of Francis and that such  
7 funds held in both accounts were in jeopardy of being moved out of the  
8 reach of the Government.

9 6. Stipulated Facts Subject to Evidentiary Objections. The following facts,  
10 though stipulated, shall be without prejudice to any evidentiary objection: None.

11 7. Claims.

12 Plaintiff:

13 (a) Plaintiff Rothwell, Ltd. ("Rothwell"), a Cayman Islands corporation, plans  
14 to pursue the following claim against the defendant United States:

15 **Claim 1.** Plaintiff Rothwell asserts that seizure of its securities investment  
16 account at Morgan Stanley by the Internal Revenue Service ("IRS") premised on the  
17 claim that Rothwell was acting as a nominee for Joseph Francis was wrongful under  
18 26 U.S.C. §7426. Plaintiff seeks a decree that: (1) it was the lawful owner of the  
19 property and was not acting nor holding title to the Morgan Stanley account or assets  
20 therein as a nominee for Joseph Francis at any time, including November 6, 2009,  
21 when the IRS served the nominee levy on Morgan Stanley; and (2) the IRS's demand  
22 for and subsequent liquidation and surrender by Morgan Stanley of the liquidation  
23 proceeds to the United States in the sum of \$20,404,629.21 pursuant to that November  
24 6, 2009, nominee levy was equally wrongful, hence the United States is ordered to  
25 refund the \$20,404,629.21 to Rothwell as well as interest as allowed by law, by paying  
26 the total amount to William A. Cohan, P.C. in trust for Rothwell, Ltd. as it's  
27 authorized representative.

28 (b) The elements required to establish plaintiff's claim are:

1 Claim 1: Plaintiff has the burden of proof to establish that the nominee lien was  
2 wrongful. Nominee status is determined by the degree to which the delinquent  
3 taxpayer (Joseph Francis) exercises control over an entity and its assets. Thus, the  
4 nominee issue here is whether Rothwell held the Morgan Stanley account and assets  
5 therein for Joseph Francis while Francis actually exercised control over Rothwell  
6 and/or Rothwell's Morgan Stanley account. The grounds or "elements" for showing  
7 that the nominee lien was wrongful, are as follows:

8 Element 1: Rothwell had an ownership interest in the Morgan Stanley account  
9 under foreign and state law (ordinarily it would be state law);

10 Element 2: Rothwell exercised complete dominion and control over its Morgan  
11 Stanley account;

12 Element 3: Rothwell's Morgan Stanley account was not the property of Joseph  
13 Francis, i.e. under foreign law and state law Joseph Francis had no property or rights  
14 to property in Rothwell, Ltd. nor Rothwell's Morgan Stanley account.

15 Finding that a delinquent taxpayer (Joseph Francis) had a property or rights to  
16 property interest in Rothwell, its assets or Rothwell's Morgan Stanley account under  
17 state and/or foreign law is a condition precedent to determining whether the IRS levy  
18 could attach to Rothwell's Morgan Stanley account.

19 Defendant United States has the burden of proving by substantial evidence  
20 either Joseph R. Francis exercised control over Rothwell, Ltd. or Rothwell's Morgan  
21 Stanley account. There are various factors the Courts use to determine nominee status,  
22 i.e. the "degree of control" element. The court should consider the totality of the  
23 circumstances rather than single out the presence or absence of one particular factor.  
24 These factors are: (1) whether the alleged nominee paid no consideration or inadequate  
25 consideration for the property; (2) whether property was placed in the name of the  
26 nominee in anticipation of a suit or occurrence of liabilities while the transferor  
27 continues to exercise control over the property; (3) whether close relationship existed  
28 between transferor and the alleged nominee; (4) whether the conveyance of the

1 property was recorded; (5) whether the delinquent taxpayer retained possession of,  
2 continued to enjoy the benefits of, and/or otherwise treated as his or her own the  
3 transferred property; (6) whether the taxpayer after the transfer paid costs related to  
4 maintenance of the property (such as insurance, tax, or mortgage payments); (7)  
5 whether, in the case of a trust, there were sufficient internal controls in place with  
6 respect to the management of the trust and it's assets; and (8) whether, in the case of  
7 a trust, trust assets were used to pay the taxpayer's personal expenses.

8 (c) In brief, the key evidence Plaintiff relies on for it's claim is:

9 In 1999 Joseph Francis established The Francis Trust ("the trust"), a  
10 discretionary asset protection trust in the Turks & Caicos Islands, B.W.I. ("TCI") in  
11 which all discretion and control over trust's assets, management, investment and  
12 distribution decisions are vested in an independent Trustee. The Trustee of the trust  
13 had no relationship with Joseph Francis. The independent Trustee exercised sole  
14 discretion over the trust's management and investment decisions and assets. The  
15 independent Trustee incorporated Rothwell, Ltd. in the Cayman Islands in 2000, the  
16 shares of which are owned by the trust. Following Plaintiff Rothwell's incorporation,  
17 the principals of the independent Trustee exercised all dominion and control over  
18 Rothwell's assets and exercised sole discretion and control over Rothwell's corporate  
19 and financial activities as directors of Rothwell. The establishment of the Trust,  
20 creation of corporations the shares of which are owned by the trust, and creation of the  
21 Mexican Corporation shares of which are owned by two corporations all shares of  
22 which are owned by the trust and their acquisition of assets occurred prior to the IRS  
23 investigation of Joseph Francis in 2006. None of Joseph Francis' personal funds were  
24 transferred to Rothwell, Ltd. or the Morgan Stanley account and none of Rothwell's  
25 assets were used to pay the personal expenses of Joseph Francis.

26 Furthermore, Joe Francis' groundless and frivolous accusations, outrageous  
27 conduct, libel, slander, and threats made against Trustee Colin Chaffe and Protector  
28 Brian Rayment to wrest from them control of the Francis Trust and all its assets,

1 including the shares of Rothwell and its assets, constitutes affirmative evidence that  
2 Joe Francis does not control the Francis Trust nor any of its assets, including the  
3 shares of Rothwell and its assets.

4 Defendant:

5 (d) Defendant, United States of America, plans to pursue the following  
6 counterclaims and affirmative defenses against the plaintiff Rothwell: None.

7 Defendant notes that subparagraphs (a), (b), and (c) above regarding plaintiff's  
8 claim, the elements of the claim, and plaintiff's evidence were drafted by plaintiff, and  
9 that defendant disputes certain statements made therein by plaintiff.

10 Plaintiff's claim is simply that the November 6, 2009, IRS levy on plaintiff's  
11 Morgan Stanley account was wrongful under 26 U.S.C. § 7426. The elements of the  
12 claim, the burdens of the parties, and the controlling law is as follows:

13 "To state a claim under § 7426 the plaintiff must show: 1) it has an  
14 interest in the property; and 2) the 'property was wrongfully levied  
15 upon.' . . . A levy is wrongful if it was placed upon property in which  
16 the delinquent taxpayer has no interest. . . . The plaintiff 'has the initial  
17 burden of proving title to the levied property.' . . . Once the plaintiff  
18 meets this initial burden, 'the United States must show that there is a  
19 nexus between the taxpayer and the property.' . . . The United States may  
20 satisfy this burden by showing that a third party or entity is the alter ego  
21 or nominee of the taxpayer who is indebted to the United States for past  
22 tax and penalties, . . . a third party trust or entity is a 'sham', . . . or the  
23 third party's interest in the property derives from a fraudulent transfer by  
24 the taxpayer whose liabilities are at issue . . . . '[T]he plaintiff bears the  
25 ultimate burden of proving that the property does not belong to the  
26 taxpayer.'"

27 911 Management, LLC v. United States, 657 F.Supp.2d 1186, 1191 (D.Or. 2009)  
28 (citations omitted), quoting The Colby B. Foundation v. United States, 1997 WL

1 1046002 (D.Or. 1997), aff'd, 166 F.3d 1217 (9<sup>th</sup> Cir. 1999).

2 "State law controls when determining whether an entity is an alter ego or  
3 nominee." The Colby B. Foundation at \*20.

4 8. Issues to be Tried. In view of the admitted facts and the elements required  
5 to establish the claim, the following issues remain to be tried:

6 (a) Whether plaintiff was the nominee of Joseph R. Francis with respect to the  
7 Morgan Stanley account when the account was levied upon by the IRS.

8 (b) Whether Joseph R. Francis had an interest in the levied property when the  
9 levy was made.

10 9. Discovery. All discovery is complete.

11 10. Exhibits. All disclosures under F.R.Civ.P. 26(a)(3) have been made.

12 The joint exhibit list of the parties has been filed under separate cover as  
13 required by L.R. 16-6.1. Unless all parties agree that an exhibit shall be withdrawn,  
14 all exhibits will be admitted without objection at trial, except those exhibits listed  
15 below:

16 Plaintiff objects to Exhibit Nos. 280, 287, 288, 289 and part of 233.

17 Grounds for objections:

18 280: Inadmissible hearsay, relevance, foundation.

19 287: Inadmissible hearsay, not a party therefore not an admission by  
20 party opponent, legal conclusion without foundation, relevance,  
21 authentication.

22 288: Inadmissible hearsay, not a party therefore not an admission by  
23 party opponent, legal conclusion without foundation, relevance,  
24 authentication.

25 289: Inadmissible hearsay, not a party therefore not an admission by  
26 party opponent, legal conclusion without foundation, relevance,  
27 authentication.

28 233: Portion of the document identified as "declaration re the beneficial

1 owner of the account," included within that Exhibit is objected to  
2 on the grounds of inadmissible hearsay, relevance, foundation,  
3 improper legal conclusion without foundation.

4 Defendant objects to Exhibit Nos. 147, 148, 149, 151, 152, 153, 154, 155, 156,  
5 157, 159 and 160.

6 Grounds for objections:

7 147: No showing that witness is unavailable to testify at trial.

8 148: No showing that witness is unavailable to testify at trial. Further,  
9 witness is the sole director and spokesperson for plaintiff and is a  
10 percipient witness to many events involved in this litigation. As  
11 such, this witness should be required to appear at trial rather than  
12 have testimony entered through the deposition transcript.

13 149: Deposition transcript must be marked and counter-marked by the  
14 parties, and admitted into evidence only as set forth in Local  
15 Rules.

16 151: The "opinion" is not an "expert" opinion but rather a legal  
17 opinion. Further, it can be admitted only through the testimony of  
18 its author.

19 152: No showing that witness is unavailable to testify at trial.

20 153: No showing that witness is unavailable to testify at trial.

21 154: No showing that witness is unavailable to testify at trial.

22 155: No showing that witness is unavailable to testify at trial.

23 156: No showing that witness is unavailable to testify at trial.

24 157: Deposition transcript must be marked and counter-marked by the  
25 parties, and admitted into evidence only as set forth in Local  
26 Rules.

27 159: The report does not provide an "expert" opinion, but is rather a  
28 legal opinion. Further, it can be admitted only through the

1 testimony of its author.

2 160: The report does not provide an “expert” opinion, but is rather a  
3 legal opinion. Further, it can be admitted only through the  
4 testimony of its author.

5 Both parties reserve the right to argue the relevance of any exhibit, and  
6 to object to receiving an exhibit for the purpose of proving the truth of certain of its  
7 contents if such contents constitute inadmissible hearsay.

8 11. Witness Lists. A joint witness list of the parties has been filed with the  
9 Court.

10 Only the witnesses identified in the joint witness list will be permitted to testify  
11 (other than solely for impeachment).

12 Each party intending to present evidence by way of deposition testimony has  
13 marked such depositions in accordance with L.R. 16-2.7. For this purpose, the  
14 following depositions to be offered by plaintiff shall be lodged with the Clerk as  
15 required by L.R. 32-1: Depositions of George Beas, Colin Chaffe, Owen Foley, Tony  
16 Maddelina, Michael Nahass, Farrell Stevens, Brian Stewart, Brian Trowbridge, and  
17 John Welker.

18 Defendant objects to the presentation of testimony by deposition of the  
19 following witnesses: George Beas, Colin Chaffe, Tony Maddelina, Michael Nahass,  
20 Farrell Stevens, Brian Stewart, and John Welker.

21 12. Law and Motion. The following law and motion matters and motions in  
22 limine, and no others, are pending or contemplated:

23 Defendant has filed a motion in limine regarding the need to further authenticate  
24 certain documents for the purpose of having them admitted into evidence. Plaintiff  
25 has filed an ex parte application to prevent defendant from calling certain witnesses  
26 who plaintiff says were not timely disclosed by defendant as witnesses who may be  
27 called at trial.

28 13. Bifurcation. Bifurcation of the following issues for trial is ordered:

1 None.

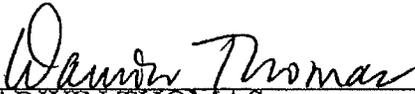
2 14. Supersedes Pleadings. The foregoing admissions have been made by the  
3 parties, and the parties have specified the foregoing issues remaining to be litigated.  
4 This Final Pretrial Conference Order shall supersede the pleadings and govern the  
5 course of the trial of this cause, unless modified to prevent manifest injustice.

7 DATED:

UNITED STATES DISTRICT JUDGE

9 Approved as to form and content:

10 ANDRÉ BIROTTE JR.  
11 United States Attorney  
12 SANDRA R. BROWN  
13 Assistant United States Attorney  
14 Chief, Tax Division

14   
15 DARWIN THOMAS  
16 VALERIE MAKAREWICZ  
17 Assistant United States Attorneys  
18 Attorneys for United States of America

18 WILLIAM A. COHAN, P.C.

19

20 By:   
21 WILLIAM A. COHAN

22 Attorney for plaintiff  
23 Rothwell, Ltd.

23

24

25

26

27

28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SD CV 10-479 RGK (FFMx) Date April 12, 2011

Title ROTHWELL LTD v. UNITED STATES OF AMERICA

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: **(IN CHAMBERS)** Order re: Joint Statement of Undisputed and Disputed Facts

Court records indicate that court trial in this matter is scheduled to begin on June 14, 2011. In addition to the requirements set forth the Order for Court Trial, entered September 20, 2010, the Court orders the parties to file twenty-one (21) days before the Final Pre-Trial Conference a Joint Statement of Disputed and Undisputed Facts.

**IT IS SO ORDERED.**

Initials of Preparer ak

1 ANDRÉ BIROTTE JR.  
United States Attorney  
2 SANDRA R. BROWN  
Assistant United States Attorney  
3 Chief, Tax Division  
DARWIN THOMAS (SBN 80745)  
4 Assistant United States Attorney  
Room 7211 Federal Building  
5 300 North Los Angeles Street  
Los Angeles, California 90012  
6 Telephone: (213) 894-2740  
Facsimile: (213) 894-0115  
7 Email: darwin.thomas@usdoj.gov

8 Attorneys for United States of America

9

UNITED STATES DISTRICT COURT

10

FOR THE CENTRAL DISTRICT OF CALIFORNIA

11

WESTERN DIVISION

12

13	ROTHWELL, LTD., a Cayman	)	Case No. CV SA 10-479-RGK (FFMx)
	Islands Corporation,	)	
14		)	
	Plaintiff,	)	
15		)	<u>ORDER ON DEFENDANT'S</u>
	v.	)	<u>APPLICATION TO STRIKE</u>
16		)	<u>PLAINTIFF'S MOTION FOR SUMMARY</u>
	UNITED STATES OF AMERICA,	)	<u>JUDGMENT</u>
17		)	
	Defendant.	)	
18		)	

19 Based on the application of defendant United States of  
20 America, to strike plaintiff's Motion For Summary Judgment, and  
21 good cause appearing therefor, both the Motion for Summary  
22 Judgment and Amendment to Motion for Summary Judgment are  
23 STRICKEN. Plaintiff has failed to conduct good faith and timely  
24 conference of counsel, pursuant to L.R. 7-3. Plaintiff has also  
25 failed to properly e-file its motion and comply with this Court's  
26 rule regarding maximum length for briefs.

27 //

28 //

1 IT IS ORDERED THAT plaintiff's Motion For Summary Judgment  
2 and Amendment are stricken. This matter will proceed to trial as  
3 scheduled. Counsel shall review the Order for Court Trial (DE  
4 16), and comply with all rules therein.

5  
6 DATED: April 12, 2011

*Jay Klausner*

7  
8 

---

HON. R. GARY KLAUSNER  
UNITED STATES DISTRICT JUDGE

9 Presented by:

10 ANDRÉ BIROTTE JR.  
Acting United States Attorney  
11 SANDRA R. BROWN  
Assistant United States Attorney  
12 Chief, Tax Division

13  
14 

---

/s/  
DARWIN THOMAS  
15 Assistant United States Attorney  
Attorneys for United States of America  
16  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. SA CV 10-00479-RGK (FFMx) Date April 6, 2011  
Title ROTHWELL LTD v. UNITED STATES OF AMERICA

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams Deputy Clerk	Not Reported Court Reporter / Recorder	N/A Tape No.
Attorneys Present for Plaintiffs: Not Present	Attorneys Present for Defendants: Not Present	

**Proceedings: (IN CHAMBERS) NOTICE TO ALL PARTIES AND ORDER**

On April 5, 2011, plaintiff filed a Notice of Motion and Motion for Summary Judgment (DE 27). On April 6, 2011, the Motion was incorrectly stricken (DE 30).

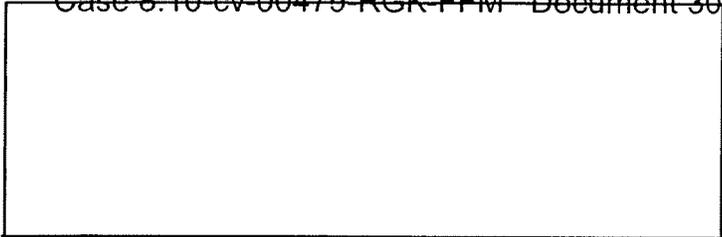
The Motion, however, remains subject to being stricken due to improper content in the notice of motion, pursuant to L.R. 7-4. No factual background included in the notice of motion will be considered by the Court.

Not later than 2:00 p.m. on April 8, 2011, Plaintiff may submit an amended, complete memorandum pursuant to L.R. 7-5(a) along with an amended notice of motion. Counsel shall also include language regarding conference of counsel prior to filing of the motion pursuant to L.R. 7-3.

**IT IS SO ORDERED.**

Initials of  
Preparer

slw



**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

ROTHWELL LTD  PLAINTIFF(S)  v.  UNITED STATES OF AMERICA  DEFENDANT(S).	CASE NUMBER:  SA CV 10-00479-RGK (FFMx)  <b>ORDER TO STRIKE                  ELECTRONICALLY FILED DOCUMENTS</b>
---	---

The Court hereby **ORDERS** the documents listed below be **STRICKEN** for failure to comply with the Local Rules, General Order 10-07 and/or the Court's Case Management Order as indicated:

04/05/2011	/ 27 /	Notice of Motion
<i>Date Filed</i>	<i>Doc. No.</i>	<i>Title of Document</i>

<i>Date Filed</i>	<i>Doc. No.</i>	<i>Title of Document</i>

- Document submitted in the wrong case
- Incorrect document is attached to the docket entry
- Document linked incorrectly to the wrong document/docket entry
- Incorrect event selected. Correct event is
- Case number is incorrect or missing.
- Hearing information is missing, incorrect, or not timely
- Local Rule 7.1-1 No Certification of Interested Parties and/or no copies
- Case is closed
- Proposed Document was not submitted as separate attachment
- Title page is missing
- Local Rule 56-1 Statement of uncontroverted facts and/or proposed judgment lacking
- Local Rule 56-2 Statement of genuine disputes of material fact lacking
- Local Rule 7-19.1 Notice to other parties of ex parte application lacking
- Local Rule 11-6 Memorandum/brief exceeds 25 pages
- Local Rule 11-8 Memorandum/brief exceeding 10 pages shall contain table of contents
- Other Memorandum exceeding 10 pages shall contain table of authorities.

Note: Please refer to the court's Internet website at [www.cacd.uscourts.gov](http://www.cacd.uscourts.gov) for Local Rules, General Order 10-07 and applicable forms.

Dated: April 6, 2011

By:   
 U.S. District Judge / U.S. Magistrate Judge

cc: Assigned District and/or Magistrate Judge

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROTHWELL, LTD, )  
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Plaintiff(s), )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant(s). )  
\_\_\_\_\_ )

CASE NO. SA CV 10-00479-RGK (FFMx)

**ORDER FOR COURT TRIAL**

Trial Date: June 14, 2011 at 9:00 a.m.  
Pretrial Conference: June 6, 2011 at 9:00 a.m.

**UNLESS OTHERWISE ORDERED BY THE COURT, THE FOLLOWING RULES  
SHALL APPLY:**

**SCHEDULING**

**1. In General**

All motions to join other parties or to amend the pleadings shall be filed and served within fifteen (15) days of the date of this order.

**2. Motions for Summary Judgment or Partial Summary Judgment**

Motions for summary judgment or partial summary judgment shall be filed as soon as practical, however, in no event later than the motion cut-off date.



1 Pursuant to Local Rule 16-14, the parties in every case must select a settlement  
2 procedure. The final meeting with the parties' settlement officer must take place no later than 45  
3 days before the Final Pretrial Conference.  
4

5 **FINAL PRE-TRIAL CONFERENCE**  
6

7 This case has been placed on calendar for a Final Pre-Trial Conference pursuant to  
8 Fed.R.Civ.P. 16 and 26. Unless excused for good cause, each party appearing in this action shall  
9 be represented at the Final Pre-Trial Conference, and all pre-trial meetings of counsel, by the  
10 attorney who is to have charge of the conduct of the trial on behalf of such party.

11 STRICT COMPLIANCE WITH THE REQUIREMENT OF FED.R.CIV.P. 26 AND  
12 LOCAL RULES ARE REQUIRED BY THE COURT. Therefore, carefully prepared  
13 Memoranda of Contentions of Fact and Law, a Joint Witness List, and Joint Exhibit List shall be  
14 submitted to the Court. The Joint Witness List shall contain a brief statement of the testimony  
15 for each witness, **what makes the testimony unique** from any other witness testimony, and the  
16 time estimate for such testimony. The Joint Exhibit List shall contain any objections to  
17 authenticity and/or admissibility to the exhibit(s) and the reasons for the objections.

18 The Memoranda of Contentions of Fact and Law, Witness List and Exhibit List are due  
19 twenty-one (21) days before the Final Pre-Trial Conference.

20 If expert witnesses are to be called at trial, each party shall list and identify their  
21 respective expert witnesses. Failure of a party to list and identify an expert witness may  
22 preclude a party from calling an expert witness at trial. If expert witnesses are to be called at  
23 trial, the parties shall exchange at the Final Pre-Trial Conference short narrative statements of  
24 the qualifications of the expert and the testimony expected to be elicited at trial. If reports of  
25 experts to be called at trial have been prepared, they shall be exchanged at the Final Pre-Trial  
26 Conference but shall not substitute for the narrative statements required.  
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1 TRIAL PREPARATION FOR COURT TRIAL - MOTIONS, FINDINGS OF  
2 FACT AND EXHIBITS  
3

4 1. Motions in Limine

5 All motions in limine must be filed and served a minimum of forty-five (45) days prior to  
6 the scheduled trial date. Each motion should be separately filed and numbered. All opposition  
7 documents must be filed and served at least twenty-five (25) days prior to the scheduled trial  
8 date. All reply documents must be filed and served at least ten (10) days prior to the scheduled  
9 trial date.

10 All motions in limine will be ruled upon on or before the scheduled trial date.

11 2. Findings of Fact and Conclusion of Law

12 Twenty-one (21) days before the trial date, all counsel are to have prepared proposed  
13 findings of fact and conclusions of law. Three copies are to be served on opposing counsel, and  
14 the original and one copy are to be lodged with the Court.

15 Upon receiving these proposed findings of fact and conclusions of law from opposing  
16 counsel, each party shall:

- 17 (1) Underline with red pencil those portions which it disputes;  
18 (2) Underline with blue pencil those portions which it admits; and  
19 (3) Underline in yellow pencil those portions which it does not dispute, but deems  
20 irrelevant.

21 In this connection, counsel are to note that they need not come to a uniform conclusion as  
22 to an entire proposed finding, or, indeed an entire sentence within a proposed finding. They may  
23 agree with part of it, disagree with part of it, and/or consider a portion of it irrelevant.

24 Seven (7) days before the trial date, each counsel shall file two marked copies of  
25 opposing counsel's proposed findings of fact and conclusions of law with the Court, and return  
26 one marked copy to the opposing counsel.

1 The parties shall be prepared to submit to the Court, and to exchange among themselves,  
2 supplemental findings of fact and conclusions of law during the course of the trial, with respect  
3 to which the same underlining procedure may be ordered.

4 **3. Trial Exhibits**

5 Counsel are to prepare their exhibits for presentation at the trial by placing them in  
6 binders which are indexed by exhibit number with tabs or dividers on the right side. Counsel  
7 shall submit to the Court an original and one copy of the binders. The exhibits shall be in a  
8 three-ring binder labeled on the spine portion of the binder as to the volume number and contain  
9 an index of each exhibit included in the volume. Exhibits must be numbered in accordance with  
10 Fed.R.Civ.P. 16, 26 and the Local Rules.

11 Exhibit list shall indicate which exhibits are objected to, the reason for the objection, and  
12 the reason it is admissible. Failure to object will result in a waiver of objection.

13 The Court requires that the following be submitted to the Courtroom Deputy Clerk on the  
14 first day of trial:

- 15 • The original exhibits with the Court's exhibit tags shall be stapled to the front of  
16 the exhibit on the upper right-hand corner with the case number, case name, and  
17 exhibit number placed on each tag. Exhibit tags can be obtained from the Clerk's  
18 Office, Room G-8, 312 North Spring Street, Los Angeles, CA 90012.
- 19 • One bench book with a copy of each exhibit for use by the Court, tabbed with  
20 numbers as described above. (Court's exhibit tags not necessary.)
- 21 • Three (3) copies of exhibit lists.
- 22 • Three (3) copies of witness lists in the order in which the witness may be called to  
23 testify.
- 24 • All counsel are to meet not later than ten (10) days before trial and to stipulate so  
25 far as is possible as to foundation, waiver of the best evidence rule, and to those  
26 exhibits which may be received into evidence at the start of trial. The exhibits to  
27 be so received will be noted on the copies of the exhibit lists.

- 1 • Any items that have not been admitted into evidence and are left in the courtroom  
2 overnight without prior approval, will be discarded.

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4 **TRIAL ON THE BRIEFS**

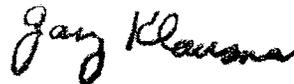
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6 **1. Briefing Schedule**

7 The parties shall timely file Opening Briefs, Oppositions and Replies based on the  
8 briefing schedule set by the Court.

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10 **2. Joint Separate Statement**

11 On the date Oppositions are due, the parties shall file a Joint Separate Statement of  
12 Undisputed and Disputed Facts. The statement shall contain the following: (1) a list of  
13 undisputed facts, including citations to the portion(s) of the administrative record that support  
14 those facts, and (2) a list of disputed fact, which also include citations to the administrative  
15 record that support each parties' disputed assertions of fact.

16  
17 DATED: September 20, 2010



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R. Gary Klausner, Judge  
UNITED STATES DISTRICT COURT

20 Rev. Feb. 2010